IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1562 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
ABDULMAJID HAMIDKHAN PATHAN

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Appearance :
MR KC SHAH APP for Appellant
None for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 29/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. The instant appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order rendered by the Additional Sessions Judge, Special Court, Patan on 9th May, 2006 in Special Atrocity Case No.11/2006 whereby the present respondent being accused of the said Special Atrocity Case came to be acquitted by the trial Court for the charges levelled against him under Sections 323, 353, 504, 506(2) of the Indian Penal Code, for the charge under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as for the charge under Section 135 of the

Bombay Police Act.

2. According to the prosecution case, the incident took place on 25th October, 2005 at about 12.00 p.m. at Radhanpur in S.T. Depot Workshop. Complainant – Ramanbhai Valsangbhai Maliva was the then working as Depot Manager in State Road Transport Service at Radhanpur and he directed the accused, who was Art-A Mechanic to take vehicles Nos.5426 and 5731 toeing together and to deliver those vehicles at Division Workshop. On this direction, the accused was provoked and he started giving abuses to the complainant, Depot Manager and caught hold of the complainant - Ramanbhai Valsangbhai Maliva by throat and stated that Adivasis had become their Bosses. Thereafter, accused took an iron pipe from the Workshop and assaulted complainant. Art-C Mechanic Mr.H.H.Malek intervened and prevented the accused. The incident was witnessed by Clerk Mr.B.K.Raval, Helper Mr.R.I.Mir and Mechanic

Driver Mr.J.P.Raval. The complaint was given by the complainant at about 19.00 hours before Radhanpur Police Station which was registered by P.W.6 – Rameshbhai Nanabhai and crime came to be registered as C.R.No.II-121/2005 for the charges mentioned above. After registering the crime, the investigation was handed over to P.W.9 – Pandur Babubhai Ramjibhai, the then Dy.S.P. of the Division. The charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class, which was registered as Criminal Case no.833/2005 and this case was committed to the Special Judge for trial and was registered as Special Atrocity Case No.11/2006. In the said Special Atrocity Case, the charges came to be framed against the respondent – accused, by the learned Special Judge, vide Ex.6 on 24th March, 2006 to which the present respondent – accused pleaded not guilty.

3. The prosecution examined as many as 9 witnesses and submitted on record necessary documents to prove its case. Thereafter, the statement of the accused was recorded by the Special Judge under Section 313 of the Code of Criminal Procedure wherein his defence was of total denial and he further stated that a false case was filed against him.

4. After hearing prosecution as well as the defence, the learned trial Judge came to the conclusion to acquit the accused and hence this appeal.

5. Learned APP Mr.K.C.Shah at this juncture submitted vehemently that the evidence of complainant i.e. P.W.1 - Ramanbhai Valsangbhai Maliva is spotless and though other witnesses have not supported the prosecution case fully, the appeal is required to be admitted as the evidence of the complainant can be taken into

consideration for appreciation. It was submitted that there is prima facie case in favour of the State for consideration of appeal.

6. We have gone through the facts and circumstances arising out of the evidence recorded during the trial at this juncture also. We are equipped with the Record and Proceedings of the trial which we have called for from the trial Court. Learned APP has provided us with extra copies of the evidence recorded during the trial and necessary documents produced in the trial Court. We have taken into account reasonable probabilities arising out of appreciation of evidence undertaken by the trial Court. We have carefully scrutinized the reasons advanced by the trial Court for acquittal.

7. Going through the evidence recorded, **P.W.1** - Ramanbhai Valsangbhai Maliva examined at Ex.8

stated that he directed the accused to take those vehicles to Division Workshop and on his direction, accused was excited and started giving abuses and assaulted him by iron pipe. According to the complainant, he was caught hold by throat and accused stated that Adivasis had become his Boss. Art-C Mechanic Mr.Malek, Mr.R.I.Mir and Mr.Raval intervened and separated complainant from the accused. He gave complaint before Radhanpur Police Station which he produced on record at Ex.9. In his cross-examination, he stated that he belongs to Adivasi Commuity for which he produced on record the certificate at Ex.10. He denied the suggestion that he had filed a false complaint. **P.W.2 –** Bharatbhai Kantilal Raval, an eye witness, examined at Ex.11 stated that in the office of the Workshop, on the day of the incident, he was working and at about 12.00 p.m, he found that some altercation had taken place between the complainant and

accused. They were segregated by Mr.J.P.Raval and Mr.H.H.Malek. Except that he did not know anything. The witness was declared hostile. **P.W.3** – Jayantibhai Pranlal Raval examined at Ex.12, also an eye witness stated that at the time of the incident accused and complainant were exchanging abuses inter se and were grappling amongst themselves. They were segregated and complainant was taken in the office of the Depot Manager. Except that nothing had happened. This witness also was declared hostile. Third eye witness **P.W.4** – Aajikhan Puranji Malek examined at Ex.13 stated that at the time of incident, he was doing his work in Workshop and some altercation took place between complainant and accused about sending vehicles to Divisional Workshop. Mr.Bharatbhai and Mr.Jayantibhai intervened and segregated complainant and accused. This witness was also declared hostile by the prosecution. Panchnama of scene of offence is produced on

record at Ex.14. **P.W.5** – Fakir Mahammad Rasulbhai Ghachi is panch witness of panchnama at Ex.16 by which it is alleged that the accused presented before police an iron pipe. But P.W.5 did not support the prosecution case and was declared hostile. **P.W.6** – Rameshbhai Nanabhai was working as P.S.O. at Radhanpur Police Station on 25th October, 2005 examined at Ex.17 and according to him at 19.00 hours, complainant presented a written complaint before him which he registered and investigation was handed over to concerned Dy.S.P. In his cross-examination, he submitted that the distance between the Bus Stand to Police Station on foot was about five minutes only. **P.W.7** – Rafik Mahmmad Umarmiya, is an eye witness, examined at Ex.20, stated before the Court that at the time of incident, he noticed that complainant and accused were quarreling amongst themselves and were abusing to each other. Hajikhan Malek, Bharatbhai Raval etc.

intervened and separated them. Except that this witness stated nothing further. He was declared hostile by the prosecution. **P.W.8** – Ramesbhai Valabhai, is second panch of panchnama Ex.23, examined at Ex.23, by which it is alleged that accused presented an iron pipe before the police, but this witness has also not supported the prosecution case. Last witness **P.W.9** – Pandur Babubhai Ramjibhai examined at Ex.24, is an Investigating Officer, who investigated the offence, arrested the accused and drew the panchnama, recorded the statement of the accused and submitted the charge-sheet. This is all the evidence of the complainant.

8. While going through reasons assigned by the learned trial Judge, it appears that the learned trial Judge came to the conclusion of acquittal because firstly, the complaint of the incident came to be filed as late as of 7.00 hours, when the Police Station was at

5.00 minutes walk from the S.T.Depot. This delay is neither explained by the complainant in F.I.R. nor in his deposition. According to the learned trial Judge, all the other witnesses stated to the extent only that accused and complainant quarreled each other and abused and none of the witnesses stated anything further. So the complainant is not supported by any of the witness. Appreciating the evidence of the complainant, learned trial Judge observed that the version of the complainant was suspicious because he did not explain the delay of 7.00 hours in filing the complaint. There were some contradictions in the version of the complainant deposed before the Court and in his complaint which he filed before the Police Station. According to the complaint, one Mr.H. H. Malek intervened and separated complainant from the accused. While before the Court, complainant deposed that one Mr.Mir, Mr.Raval and Mr.Malek intervened in the quarrel. Eventhough, the complainant

was caught hold by the accused, as per the say of the complainant, he had not sustained even simple injury. He did not offer his shirt before the police. When he categorically stated that his shirt was crushed. According to the learned Judge, when his evidence was appreciated with the evidence of other witnesses, it clearly transpired that the prosecution failed to prove the charges against the accused. Therefore in view of the trial Court, the evidence of the complainant was found suspicious and he failed to establish injury and exact words uttered by the accused as well as the words which insulted the caste of the complainant in public. For these reasons, learned trial Judge acquitted the accused.

9. This is an appeal against the order of acquittal and it is well settled that even though second legitimate view might be possible from the same evidence than the view

taken by the trial Court, interference in an order of acquittal is not warranted, unless it is found that the findings arrived at by the trial Court are perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable. When we scanned the evidence recorded during the trial and reasons advanced by the trial Court, we are of the view that except complainant, none of the witnesses supported the prosecution case. The complainant could not explain, the delay of 7.00 hours in preferring the complaint. The evidence of the complainant was found suspicious and needed corroboration which was not provided by other witnesses. In these circumstances, the findings arrived at by the trial Court cannot be said to be perverse, palpably wrong, manifestly erroneous or demonstrably unsustainable. Therefore, even at this juncture also, after careful scrutiny of the matter, we come to the conclusion that no interference is warranted in the judgment

and order of the acquittal impugned in this appeal and hence, the following order.

Leave to appeal is refused. Appeal stands dismissed.

[J. R. VORA,J.]

[SMT. ABHILASHA KUMARI,J.]

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